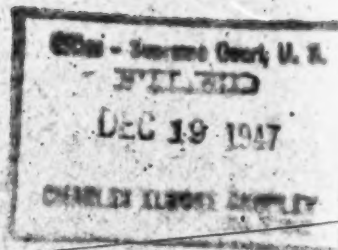


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No. 100

In the Supreme Court of the United States

OCTOBER TERM, 1947

UNITED STATES OF AMERICA, PETITIONER

v.

JIMMIE IRA BROWN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 22-27) is reported at 67 F. Supp. 116. The opinion of the Circuit Court of Appeals (R. 31-36) is reported at 160 F. 2d 310.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 4, 1947 (R. 36), and a petition for rehearing (R. 37-40) was denied April 25, 1947 (R. 40). The petition for a writ of certiorari was filed May 23, 1947, and was granted October 13, 1947 (R. 42). The jurisdiction of

this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a), Federal Rules of Criminal Procedure.

QUESTION PRESENTED

Whether the provision of the federal escape statute that a sentence for escape shall begin upon the expiration of any sentence under which the prisoner is held at the time of escape, requires that a sentence for escape, imposed upon a prisoner who was already in custody under several consecutive sentences, shall begin upon the expiration of the particular sentence being served at the time of the escape or at the expiration of the combined term of the prior consecutive sentences.

STATUTE INVOLVED

The Act of May 14, 1930, c. 274, § 9, 46 Stat. 327, as amended by the Act of August 3, 1935, c. 432, 49 Stat. 513 (18 U. S. C. 753h), provides:

Any person committed to the custody of the Attorney General or his authorized representative, or who is confined in any penal or correctional institution pursuant to the direction of the Attorney General, or who is in custody by virtue of any process issued under the laws of the United States by any court, judge, or commissioner, or who is in custody of an officer of the United States pursuant to lawful arrest, who escapes or attempts to escape from such

custody or institution, shall be guilty of an offense. If the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense whatsoever, the offense of escaping or attempting to escape therefrom shall constitute a felony and any person convicted thereof shall be punished by imprisonment for not more than five years or by a fine of not more than \$5,000, or both; and if the custody or confinement is by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, the offense of escaping or attempting to escape therefrom shall constitute a misdemeanor and any person convicted thereof shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000, or both. The sentence imposed hereunder shall be in addition to and independent of any sentence imposed in the case in connection with which such person is held in custody at the time of such escape or attempt to escape. If such person be under sentence at the time of such offense, the sentence imposed hereunder shall begin upon the expiration of, or upon legal release from, any sentence under which such person is held at the time of such escape or attempt to escape.

STATEMENT

On October 26, 1945, respondent was sentenced under two indictments in the United States District Court for the Western District of Arkansas

(R. 13-21). The first indictment was in two counts and charged conspiracy to escape and attempted escape (R. 13-15); the other charged a violation of the National Motor Vehicle Theft Act (R. 19). Respondent was sentenced under the first indictment to imprisonment for one year on the second count and two years on the first count, to run consecutively in that order (R. 16); and on the other indictment, he was sentenced to imprisonment for two years to begin upon the expiration of the sentences imposed under the first indictment (R. 20). He was thus sentenced to imprisonment for a total of five years under both indictments.

On November 2, 1945, while respondent was in the custody of a deputy United States marshal and a guard who were transporting him through the State of Missouri to Leavenworth Penitentiary, he attempted to escape. He was indicted for this attempted escape in the District Court for the Western District of Missouri, and he pleaded guilty (R. 1, 3). On January 17, 1946, he was sentenced as follows (R. 3):

* * * it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of five (5) years to begin at the expiration of any sentence he is now serving, or to

be served which was imposed prior to this date, without costs.

In July 1946, respondent filed a motion in the District Court for the Western District of Missouri to correct this last sentence,¹ contending that at the time of the attempted escape, he was being held only under the one-year sentence imposed on the second count of the first indictment returned against him in the Western District of Arkansas, and that his sentence for the attempt to escape in Missouri was required to commence at the expiration of such one-year sentence (R. 10-13). He based his contention on that part of 18 U. S. C. 753h (often referred to as the Federal Escape Act) which reads as follows:

If such person be under sentence at the time of such offense, the sentence imposed hereunder shall begin upon the expiration of, or upon legal release from, any sentence under which such person is held at the time of such escape or attempt to escape.

The District Court overruled the motion (R. 27). In its memorandum opinion (R. 22-27), the court held that under the language of the statute the sentencing court *could* provide that respondent's sentence for attempted escape should begin to run after the service of any one of respondent's three

¹ A prior motion to vacate this sentence and the proceedings in relation thereto appear in the record (R. 3-10) but are not involved in this proceeding.

prior sentences or the combined term of such sentences. It also stated (R. 26-27):

* * * To sustain the contention here made by defendant would produce the absurd result of permitting a person, having accumulative sentences, to avoid the penalty provided for a violation of the Federal Escape Act, if such person escaped during the term of the first or an intermediate sentence. Congress did not intend, by the enactment of the Federal Escape Act, to produce any such result.

On appeal, the Circuit Court of Appeals for the Eighth Circuit sustained respondent's contention and reversed the order of the District Court (R. 36). In its opinion (R. 31-36), the Circuit Court of Appeals assimilated the word "held" in the statute to "serving" and concluded that a sentence for escape or attempted escape must begin at the expiration of the particular sentence which the prisoner was serving at the time of the escape or attempted escape—in this case the one-year sentence on the second count of the first indictment returned against him.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that, under 18 U. S. C. 753h, a sentence for attempted escape, imposed against a person in custody under several consecutive sentences, must begin at the expiration of the particular sentence which he is serving at the time of

the attempted escape, rather than at the expiration of the combined term of the consecutive sentences.

2. In holding that a prisoner against whom several consecutive sentences have been imposed is "held," within the meaning of 18 U. S. C. 753h, only under the particular sentence which he is serving at the time of escape, and not under the aggregate sentences.

3. In reversing the order of the district court denying respondent's motion to correct his sentence for attempted escape in order to have it commence to run at the expiration of the particular sentence he was serving at the time of the attempted escape, rather than at the expiration of the combined term of the consecutive sentences.

SUMMARY OF ARGUMENT

The purpose of the Federal escape statute is to require the imposition of punishment for the crimes of escape and attempted escape which will be in addition to and distinct from the punishment imposed for any other offenses. This is apparent not only from the express language of the statute but from its origin as a penal discipline measure. In the light of the terms and purpose of the statute, it should be construed as requiring that a sentence imposed for attempted escape commence to run only upon the expiration of the aggregate of all consecutive terms of im-

prisonment to which the offender had been sentenced at the time of the attempted escape. There is no basis for construing the last sentence of the statute so as to require the sentence for attempted escape to commence running at the end of the particular consecutive sentence which the offender was serving at the time of the escape. This would result in the escape sentence running concurrently with the sentences which the offender, at the time of the attempted escape, had yet to commence serving. Such an interpretation would achieve the effect of making the escape statute inapplicable in many cases where the offender is serving heavy consecutive sentences, and of thus removing the deterrent from attempting escape in the situations where it is most needed.

ARGUMENT

I

THE CLEAR PURPOSE OF THE STATUTE IS TO INSURE PUNISHMENT FOR ESCAPE WHICH WILL BE SUPERIMPOSED UPON PUNISHMENT IMPOSED FOR OTHER OFFENSES

The clear purpose of the Federal Escape Act is to make escape or attempted escape from a Federal penal or correctional institution or from the custody of a Federal officer a new and separate crime and to require punishment for such crime which will be separate and distinct from the punishment for the offenses for which the prisoner was originally confined or taken into custody. This purpose of the Congress is clearly

evident from the provisions of the statute prescribing precisely the manner in which punishment for escape or attempted escape shall be imposed, as follows:

The sentence imposed hereunder shall be in addition to and independent of any sentence imposed in the case in connection with which such person is held in custody at the time of such escape or attempt to escape. If such person be under sentence at the time of such offense, the sentence imposed hereunder shall begin upon the expiration of, or upon legal release from, any sentence under which such person is held at the time of such escape or attempt to escape.

The opinion of the court below recognizes that if the respondent had been serving but a single sentence, the five-year sentence for attempted escape during such confinement must have been imposed to run from the expiration of, or his legal release from, the earlier sentence. In that situation, it is admitted that the escape statute would have been effective to provide additional and distinct punishment for the offense of attempted escape. But where, as here, the offender is serving successive sentences and attempts an escape while he is serving the first of such sentences, the Circuit Court of Appeals held that the sentence for the attempted escape must run from the expiration of such first sentence, even though the length of the combined remaining sentences is

such that as a practical result the prisoner incurs no additional punishment by way of imprisonment for the escape attempt. To the contrary we contend that both the language and history of the escape statute indicate a clear Congressional purpose to insure in all cases the imposition of additional punishment for the crime of escape or attempted escape, and that nothing in the statutory language will support a construction defeating that purpose.

A. THE LEGISLATIVE HISTORY

Escapes and attempted escapes from penal institutions or from official custody present a most serious problem of penal discipline. They are often violent, menacing, as in the instant case, the lives of guards and custodians, and carry in their wake other crimes attendant upon procuring money, weapons and transportation and upon resisting recapture. Prior to the enactment of the original Federal escape statute on May 14, 1930 (c. 274, § 9, 46 Stat. 327), there was no Federal statute prescribing as crimes prison breach or escape by prisoners from custody, although these were crimes under common law (Miller, *Criminal Law*, pp. 463-465). The bill which contained the escape provision was part of a program sponsored by the Attorney General for the reorganization and improved administration of the Federal penal system (H. Rep. 106, 71st Cong., 2d sess; S. Rep. 537, 71st Cong., 2d

sess.). As originally enacted, the escape section (§ 9) dealt only with those who were under sentence at the time of escape or attempted escape. It provided:

SEC. 9. Any person properly committed to the custody of the Attorney General or his authorized representative or who is confined in any penal or correctional institution, pursuant to the direction of the Attorney General, who escapes or attempts to escape therefrom shall be guilty of an offense and upon apprehension and conviction of any such offense in any United States court shall be punished by imprisonment for not more than five years, such sentence to begin upon the expiration of or upon legal release from the sentence for which said person was originally confined.

It is important to realize that the escape statute originated as and remains a matter of penal discipline and administration, and is therefore *in pari materia* with other Federal statutes dealing with the same problems. Thus viewed, there could be no doubt under the original escape act as to the "expiration" or the duration of "the sentence" for which the prisoner "was originally confined" where he had received consecutive sentences. As of 1930, there had been in effect for years Federal statutes dealing specifically with the expiration or release date in situations where the prisoner was confined under successive sentences. The stat-

ute fixing the deductions from sentences for good conduct, which was enacted on June 21, 1902 (c. 1140, § 1, 32 Stat. 397, 18 U. S. C. 710), specifically provided that "When a prisoner has two or more sentences, the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated." This concept of a single aggregate sentence has been applied to hold that where an offender forfeits his good time allowance after the expiration of one of the constituent sentences, he loses the good time earned earlier on that sentence. *Tippitt v. Squier*, 145 F. 2d 211 (C. C. A. 9); *Aderhold v. Perry*, 59 F. 2d 379 (C. C. A. 5). Similarly the statute relating to parole, which was enacted on June 25, 1910, and amended on January 23, 1913 (18 U. S. C. 714) specifically provided that a prisoner should not be eligible for parole until he "has served one-third of the total of [the] term or terms for which he was sentenced." [Italics ours.]

The escape statute is concerned with the same general problems of prisoner behavior and discipline as the good conduct and parole statutes. And under those statutes, consecutive sentences imposed upon a Federal offender were treated as an aggregate for the purpose of determining when they expired or when the offender was entitled to his release. Thus, it would seem clear that the original Federal escape statute contemplated that a Federal offender confined under several consecutive sentences was to be considered as confined under or

serving, for the purpose of penal discipline and administration, a single sentence composed of the aggregate of the terms of imprisonment prescribed by the consecutive sentences.

The Federal Escape Act as originally enacted, however, covered only those persons who escaped or attempted to escape after conviction and sentence. At the request of the Attorney General (H. Rep. 803, 74th Cong., 1st sess.; S. Rep. 1021, 74th Cong. 1st. sess.) the statute was amended in 1935 to define also as a crime escape or attempted escape while in custody on a Federal charge prior to conviction (*supra*, pp. 2-3). The injection into the statute of this new offense made it necessary, as appears from the draft of the bill submitted by the Attorney General (H. Rep. 803, 74th Cong., 1st sess., p. 2), to insert two new sentences at the end of the legislation so as to specify the method of imposing punishment with respect to each of the two offenses. Where the escape or attempted escape occurred while the offender was held in custody on a Federal charge but prior to conviction and sentence on the charge, the sentence imposed for the escape was to be "*in addition to and independent of any sentence imposed in the case in connection with which such person is held in custody at the time of such escape or attempt to escape*" (italics supplied). The second sentence added by the 1935 amendment is the last sentence of the statute and is the one here involved. It provides that "If such person be under sen-

tence at the time of such offense [of escape or attempted escape], the sentence imposed hereunder shall begin *upon the expiration of, or upon legal release from, any sentence under which such person is held* at the time of such escape or attempt to escape." [Italics supplied.]

It is clear that the purpose of the 1935 amendment was merely to define the new offense of escape from custody prior to sentence, and was in no way intended to change the punishment for escape or attempted escape. Thus, the obvious purpose of the original escape statute to provide punishment by imprisonment in addition to the aggregate of any successive sentences imposed upon the prisoner prior to escape, was not abandoned.

B. THE STATUTORY LANGUAGE

It would be difficult to devise language which would express more clearly than do the last two sentences of the statute, the purpose of Congress to provide punishment for escape and attempted escape which would be superimposed upon any punishment meted out for other offenses. Thus, with respect to escape occurring prior to the imposition of sentence for the original offense, the present statute provides that the sentence imposed for escape or attempted escape "*shall be in addition to and independent of* any sentence imposed in the case in connection with which such person is held in custody at the time of such escape or

attempt to escape.” [Italics supplied.] The italicized words clearly connote that the sentence for escape or attempted escape must not be served concurrently with *any* sentence imposed for other offenses.²

² In *Rutledge v. United States*, 146 F. 2d 199, the Fifth Circuit held that imposition of a sentence for attempted escape from custody prior to sentence, could run concurrently with the sentence imposed in the case as to which the offender was held in custody because such a concurrent sentence would be an “additional and independent sentence” (at p. 200). Not only did that decision completely ignore (it did not discuss) the clear legislative purpose, but it drew a distinction between the last two sentences of the statute, suggesting that under the last sentence the sentence for escape while already serving a sentence must be made consecutive to the sentence which the prisoner was already serving. We have pointed out why there is no basis for such a distinction. Also, in the light of the statutory purpose, it seems overly technical to construe the requirement of a sentence “in addition to and independent of” as satisfied by a concurrent sentence which would be independent of the original sentence only in the sense that it would stand even if the original sentence was later held void.

It should be noted that in the revision of Title 18 of the United States Code embodied in H. R. 3190, 80th Cong., 1st sess. (which was passed by the House on May 12, 1947, but was not acted upon by the Senate), the revised escape provision (Sec. 751) omits the last two sentences of the present statute. In the revisers’ notes (H. Rep. 304, 80th Cong., 1st sess., p. A67) it is explained that “Mandatory provision as to separate sentences and order of service was omitted in order to permit court to exercise discretion as to whether sentences should be concurrent or consecutive * * *.” This only emphasizes that the last two sentences of the present escape statute are entirely superfluous if that statute is construed as merely empowering the courts to impose at their discretion a concurrent or consecutive sentence for the crime of escape or attempted escape.

The last sentence of the statute now provides that:

If such person be under sentence at the time of such offense, the sentence imposed hereunder shall begin upon the expiration of, or upon legal release from, any sentence under which such person is held at the time of such escape or attempt to escape.

The statutory command is that a sentence imposed for escape or attempted escape "shall begin upon the expiration of, or upon legal release from, any sentence under which such person is held at the time of such escape or attempt to escape." Here again, the purpose to require punishment for escape or attempted escape which will be entirely distinct from and in addition to the punishment for any other offenses, is clear. The court below recognized this statutory purpose in the situation where at the time of attempted escape the prisoner is serving but a single sentence; there, the court said, the sentence for escape "must be consecutive to the sentence which he is serving and in addition thereto" (R. 33-34). However, the lower court held that where, as in this case, at the time of the attempted escape, the prisoner is confined pursuant to several consecutive sentences, the additional sentence for escape must commence to run at the expiration of the sentence which he was then serving.

Specifically, the lower court, starting with the principle that penal statutes must be strictly construed in favor of the accused, concluded that the words, "any sentence under which such person is held" referred to the particular sentence which the respondent was serving at the time of his attempted escape. In brief, the court found that "held" meant "serving." Thus, since at the time of the attempted escape, the respondent was "serving" his first sentence, i. e., the one-year sentence on the second count of the first indictment, the court held that the sentence for attempted escape should run from the expiration of the one-year sentence, or concurrently with the remaining consecutive two-year sentences.

Conceding that penal statutes should be strictly construed, it is well established that this principle "does not require distortion or nullification of the evident meaning and purpose of the legislation." *United States v. Gaskin*, 320 U. S. 527, 529-530; *United States v. Raynor*, 302 U. S. 540, 552; *United States v. Giles*, 300 U. S. 41, 48; *Gooch v. United States*, 297 U. S. 124, 128; *United States v. Corbett*, 215 U. S. 233, 242. We have shown that the clear purpose of the escape statute is to provide punishment for the serious crime of escape or attempted escape which will be superimposed upon the punishment already assessed for other offenses, even though such other punishment was imposed in the form of successive sentences. The lower court's construction might find

at least technical justification if the statute, instead of reading "*any* sentence under which such person is held," used the words "*the* sentence under which such person is held." As it is, considering the history of the statute and its purpose, the words employed are a natural way of expressing the purpose that the sentence imposed for escape while already under sentence shall begin upon the expiration of the aggregate of the terms of imprisonment imposed by the earlier sentences.

The legislative history throws no light on the meaning of the word "held" as used in the last sentence of the statute, and on which the lower court's decision hinges, but the practical context does. The last two sentences of the statute provide for the imposition of punishment for escape or attempted escape in two situations: first, where the escape or attempted escape occurs *prior* to sentence for the original offense, and, second, where the escape or attempted escape occurs *after* sentence for the original offense. In other words, the dichotomy is *before* and *after sentence*, rather than *before* and *after the beginning* of confinement. Thus, the last sentence applies to escapes or attempted escapes occurring *after* the original sentence was imposed, regardless of whether the offender had commenced to serve such original sentence. The last sentence, therefore, applies not only to escapes by prisoners actually serving a prior sentence but also to prisoners who are being held pursuant to con-

viction and sentence. For example, where a sentenced offender attempts to escape while being transported to a Federal penitentiary (without having been confined to await such transportation), the last sentence of the escape statute applies because he is *under sentence* and is held under, or by reason of, such sentence, although he has not yet commenced to serve the sentence.³ Since the last sentence of the escape statute is thus applicable to escapes both by prisoners serving a prior sentence and by those who, while in custody, have not yet commenced to serve the prior sentence, it was obviously appropriate for Congress to use the word "held" rather than "serving." In fact, if it had referred to the "sentence which such person is serving" or, as it did in the original act, to the sentence for which he "was originally confined," it is possible that the escape statute would be held inapplicable to

³ The Act of June 29, 1932, c. 310, sec. 1, 47 Stat. 381, 18 U. S. C. 709a, provides that:

"The sentence of imprisonment of any person convicted of a crime in a court of the United States shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of said sentence: *Provided*, That if any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, the sentence of such person shall commence to run from the date on which he is received at such jail or other place of detention. No sentence shall prescribe any other method of computing the term."

a prisoner who escaped or attempted to escape after sentence but before commencing to serve his original sentence. The present language thus avoids the awkwardness of the original statute with respect to offenders who have been sentenced but not yet confined in the institution which is to receive them.

It is apparent, therefore, that the use of the word "held" in the last sentence was both appropriate and deliberate, and that there is no basis whatever for the lower court's assumption that by "held" the Congress meant to refer to the particular sentence which the prisoner was "serving" at the time of the attempted escape.

The opinion of the court below indicated that it relied upon the following language from *Thomas v. Hunter*, 153 F. 2d 834, 837 (C. C. A. 10):

"Furthermore, we think the proviso upon which petitioner relies means that where one is confined and actually serving a prior sentence when he escapes from custody, then the sentence for such escape must be fixed with relation to the expiration date of the prior sentence or with reference to the date on which one is thereafter legally released from confinement thereunder."

Neither the decision in that case, nor the quoted language, has any relevance to the instant case. There, while Thomas was on parole from imprisonment under a prior conviction, he was arrested and indicted for violation of the Dyer Act. Pending his plea to this charge and while in the custody of a marshal, Thomas twice attempted to escape. Eventually, he was sentenced to four years imprisonment on the Dyer Act charge, and to additional sentences of five years each on the two escape charges to run consecutively to each other and to the sentence under the Dyer Act conviction. Relying upon the last sentence of the escape statute, Thomas contended

II

THE DECISION BELOW RENDERS THE ESCAPE STATUTE
INAPPLICABLE TO THE PENAL DISCIPLINARY SITUATIONS
WHERE IT IS MOST NEEDED

The decision of the Circuit Court of Appeals leads to results which it is hard to believe were intended by the Congress. We have pointed out that escape and attempted escape are often crimes of violence which menace the lives of the custodial officers. They bear no particular relationship to the crime or crimes for which the offender is in custody at the time of the escape or attempted escape. Rather, escape and attempted escape are prescribed and punished as crimes to preserve penal discipline.

Under the decision below, the Congressional purpose would be frustrated, in part at least, in every situation where an escape is effected or attempted during the prisoner's service of any but the last of two or more consecutive sentences.

that the two escape sentences should run from the completion of his original sentence (from which he had been paroled) rather than from the completion of the sentence for the Dyer Act violation. The Tenth Circuit Court of Appeals rejected this contention on the ground that "If one is out on parole he is not held under the sentence." In so doing, the Tenth Circuit was applying the rule of *Zerbat v. Kidwell*, 304 U. S. 359, as to the effect of parole upon the running of a sentence, and it was in this context that the quoted language was used. In fact the sentence following the quoted language from the *Thomas* opinion is as follows: "It [the last sentence of the escape statute] has no application where one is out on parole when he escapes from custody."

Indeed, that purpose would be completely nullified in all cases where the consecutive sentences which the prisoner has not yet begun to serve aggregate five years or more, since, according to that decision, even if the five-year maximum sentence is imposed for the escape, it must necessarily run concurrently with such unserved aggregate. For example, where a prisoner who has been sentenced to two consecutive terms of one and five years, effects or attempts escape during the service of the first or one-year term, a judge would be powerless under the decision below to increase the duration of the prisoner's total period of incarceration, since the escape sentence would necessarily commence upon the expiration of the one-year sentence and could not possibly exceed in duration the second of the two original sentences, with which it would run concurrently.

Perhaps a more striking illustration of the nullification of the Congressional purpose achieved by the decision below would be a situation where a prisoner has been sentenced to, say, three five-year consecutive terms. If he should effect or attempt escape during his service of either of the first two of such terms, it would be utterly beyond the power of the judge imposing sentence for the escape to lengthen the total period of the prisoner's confinement. More than that, the number of times the prisoner effected or attempted escape during the first two of his consecutive sentences

would be immaterial so far as the power to increase the period of his confinement was concerned. Thus, the prisoner, secure in the knowledge that no judge could increase the period of his imprisonment as a penalty for attempted or effected escape, could, with impunity, make or attempt any number of jail breaks, provided only that they occurred during the first 10 years of his 15-year period of detention. It would be only during the last five years that an attempted escape would be at the risk of having his prison term extended. To an impecunious offender, who had little fear of the \$5,000 fine that might be imposed for each attempted escape, the only practical inducements against repeated attempts to escape during the first 10 years of such a 15-year term would consist of fear of losing his good-time allowances and the opportunity for parole—inducements which in the past have not always been sufficient to prevent offenders from seeking by escape the immediate freedom they desire. The effect of the decision below, therefore, is to place a premium on escape attempts in all such situations as we have suggested, since the prisoner would have virtually nothing to lose by such an attempt, and his liberty to gain.

A second anomalous result, achieved by the holding below is that, whereas a sentencing court may direct that a sentence for any offense other than that of escape shall begin at the expiration of the aggregate term of two or more consecutive

sentences theretofore imposed, it may not do so for the offense of escape—the one offense which Congress unmistakably intended should be subject to separate and additional punishment. Such a result emphasizes the error of a construction of the escape statute which is contrary to the Congressional purpose and is not required by the language employed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed.

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DECEMBER 1947.

